Insurance Commissioner John Garamendi's
2004 Enacted Legislation

Senior Protection

- Senate Bill 1273 (Scott): Increases jail time to one year and monetary penalties to $50,000 for "twisting" or "churning" of annuities. While the vast majority of agents are ethical, senior citizens in particular can be a vulnerable population easily defrauded by unscrupulous insurance agents and brokers. "Twisting" or "churning" is the practice of inducing a person to take out a policy of insurance, then encouraging them to lapse, forfeit, switch policies or surrender a policy, resulting in large commissions to the agent. Increasing the financial penalties and jail time for "twisting or churning" will act as a deterrent to criminals and ensure that these cases receive a more appropriate sentence given the egregious nature of the crime.

- Assembly Bill 2316 (Chan): Establishes the "Senior Protection Fund" by assessing up to $1 per each new individual annuity or life insurance product sold in California. This fund will be used for Department of Insurance and local District Attorney fraud investigation activities and education efforts related to life insurance/annuity fraud. The Department of Insurance receives hundreds of complaints each year in which agents/brokers befriend consumers, particularly the elderly and commit elder financial abuse. These cases are complex and time consuming. Often, District Attorneys lack the resources to prosecute even the most egregious cases. In addition, the Department lacks the resources to provide adequate education to senior citizens about annuities and other senior insurance products so they can make informed choices and prevent financial abuse.

- Assembly Bill 2384 (Nakano): Allows the department to penalize insurance companies who don't pay credit life and disability policy death benefits within 30 days of the date of a death. Current law requires that most, but not all, types of life insurance policies pay within 30 days of a death. Beneficiaries of accidental death policies and credit life claims need to be entitled to the same timeliness of payment and interest on the proceeds if untimely payment is made as all other types of death benefits.

  The bill also requires all life insurance policy and annuity contract forms to be filed with the Department prior to being issued. It is important that all annuity forms be filed so that flexibility allowed for determining minimum cash values is not abused; thus protecting consumers.

- Assembly Bill 2557 (Koretz): Increases the misdemeanor penalty for individuals who transact insurance without a license to imprisonment for up to one year in county jail and provides for a fine up to $50,000, depending on the severity of the crime. The Department of Insurance receives numerous complaints regarding unlicensed individuals who transact insurance by fraudulent means (provide false insurance documents etc.). Increasing the penalty for those who sell insurance without a license is warranted given the potentially devastating financial harm that can result to the consumer.

  The bill also requires agents to inform the Department of Insurance when they have been accused/convicted of a felony or other charges. Current law does not require applicants or agents to report changes in background information <u>after</u> an original application has been submitted but is still in process or between renewal periods (every two years). Most insurance licenses are renewed every two years and this time lag exposes the public to licensees who may be unqualified or dishonest.

Homeowners' Bill of Rights – 2003 Southern California Wildfire Survivors Protection

- Assembly Bill 2199 (Kehoe) – Extensions for Rebuilding Destroyed Homes. This bill establishes a minimum 12-month period (24 months for a declared State of Emergency) for homeowners to repair, rebuild, or replace their home after a loss, commencing with payment of actual cash value. In the event of a total loss, allows homeowners the flexibility to rebuild or replace in a different location than where the original loss occurred. Generally, homeowner policies limit the amount of time consumers have to rebuild or replace property in order to receive full replacement cost value. Some policies require the consumer to rebuild within 180 days after the loss. While this may prove difficult under normal circumstances, this is particularly problematic for consumers when there is a scarcity of materials and labor due to widespread catastrophic damage such as the 2003 Southern California wildfires or when the weather is uncooperative. <u>*This bill contains an urgency clause and will help Southern California firestorm survivors immediately.*</u>

- Assembly Bill 2962 (Pavley) – Guaranteed Renewability/Premium Adjustments. Insurers are prohibited from canceling coverage during the course of rebuilding the destroyed structure and must renew a policy at least once if a total loss was caused by a disaster. Also establishes a uniform measurement of "actual cash value." Many homeowner policies do not clearly define how "actual cash value" will be determined leading to protracted conflicts between homeowners and insurers. This bill also ensures that insurers do not depreciate items that, by their nature, do not depreciate (wear out) during the normal life of a structure. Such items might include two-by-four studs, drywall, cement posts, and other components that do not usually wear out. However, an insurer may apply physical depreciation to items that do wear out like roofing materials, carpeting, paint, etc.

Finally, AB 2962 requires insurers, at the time of renewal, to reduce the amount of the premium to reflect the reduced loss exposure in the case of a total loss, if the structure has not been rebuilt by the time of the policy renewal. Consumers should only pay a premium for the existing exposure, such as liability insurance

Senate Bill 64 (Speier) – Mediation Program for Fire Survivors. Authorizes the Department of Insurance to sponsor a mediation program to expedite the resolution of conflicts between victims of the Southern California wildfires and their insurance carriers relating to issues such as coverage, scope of loss, and claims settlement and payment practices. The program would be roughly patterned after the one established by the Legislature following the 1993 Northridge Earthquake. Mediators would be selected from a list of qualified applicants established by the Department, but paid for by the insurer involved in the dispute. Either party may accept or reject any agreement proposed during the mediation; or consumers would have up to three days to rescind any agreement reached during mediation. This type of program would greatly help those who discover they are underinsured despite purchasing coverage at the policy limit suggested by the agent or insurer. *This bill contains an urgency clause and will assist Southern California firestorm survivors immediately.*

- Senate Bill 1855 (Alpert) – Underinsurance Disclosures. Consumers are provided with various disclosures when they purchase a homeowners policy. One disclosure, known as the "Petris Disclosure", is given to consumers every two years and defines each of the categories of coverage available in the marketplace. The coverage currently known as 'Extended' Replacement Cost will now be called 'Limited' Replacement Cost. The "Declarations" page for the policy will include a new consumer disclosure about limitations on reconstruction costs for their home. In addition, a new ‘California Residential Property Insurance Bill of Rights’ will be provided to consumers every two years. Making all of this information available will reduce the chances of, and amount of, underinsurance in the case of a catastrophic loss, such as in the Southern California firestorm of 2003.

Other Sponsored Bills

- Assembly Bill 2677 (Ridley-Thomas): Requires automobile insurers and insurer groups to provide consumers a cost estimate for its lowest price personal automobile insurance policy at the limits the consumer has requested and for which the consumer is eligible.

  Insurers will meet this requirement by maintaining a toll-free telephone number or an Internet site, which is available to consumers or refer consumers to an insurer representative or insurance agent/broker to receive the cost estimate.

  According to the Department’s market conduct studies, many major insurance companies have statewide, toll-free telephone numbers available for consumers; however, it is not always possible to get an insurance cost estimate through these numbers. In addition, other insurance companies do not have telephone numbers available for consumers to obtain cost estimates whatsoever. Oftentimes, these companies prefer to do business only with consumers that they have pre-selected. As a result, consumers find they do not have as much choice available to them for comparison shopping.

  In 1988, Californians passed the Insurance Rate Reduction and Reform Act (also known as Proposition 103), which requires insurance companies to offer and sell a policy to a person who meets the standards of a good driver. The standards are primarily determined by a driver’s safety record and mileage driven. Yet, insurance companies could circumvent this legal responsibility by being hard to reach and delaying the cost estimate to consumers until they purchase coverage elsewhere. This delay makes it difficult for consumers to comparison shop for the policy that suits them best.

- AB 2208 (Kehoe). Conforms health insurance law to other statutes requiring domestic partners to be treated the same as spouses for health insurance purposes.

- AB 1227 (McCarthy) - The bill creates different penalties than currently exist for inadequate Special Investigations Units of insurance companies.

- AB 1728 (Vargas) - Makes several substantive changes to the law regarding investments by insurers in subsidiaries, reporting requirements disability fraud funding, and a technical change to eliminate an obsolete provision prohibiting a rollback of surety rates.